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**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: February 26, 2009
Decided: March 12, 2009

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Re: *In re ECH Management, LLC*, C.A. No. 3126-CC
In re ECH, LLC, C.A. No 3127-CC

Dear Counsel:

This case concerns two separate actions that were initiated in July of 2007 by Arthur Hindman, Judith Hindman and Steven Hindman (collectively the “petitioners”) seeking the dissolution of ECH and ECHM based upon a purported deadlock in the management of these Delaware LLCs. The respondent is Barbara Hindman, who is the sister of the petitioners. Barbara Hindman answered the petitions for dissolution, initially asserting two counterclaims, one seeking injunctive relief based on fiduciary duty breaches and a second asserting a claim for indemnity under the LLC operating agreements. She amended her counterclaim on March 7, 2008, to assert an additional claim for injunctive relief based on breaches of the implied covenant of good faith and fair dealing. Before the Court at the present time is a motion to dismiss Barbara Hindman’s counterclaims as unripe and for failure to state a claim.

I need not recite in detail the factual background of the litigation. Suffice it to say, for present purposes, this is a family dispute involving four siblings who established these

two Delaware LLCs to hold and manage certain real property (the Sears Road Property and the Dudley Street Property) located in Brookline, Massachusetts. The properties evidently were “gifted” to the LLCs by the siblings’ mother. One of the properties is unimproved while the other property has a home on it. Evidently these properties were placed into the LLCs on the advice of a tax advisor in order to reduce the Hindman siblings’ potential tax liability. Each of the LLCs is managed by an individual who handles the day-to-day operation of the LLCs. In order to take significant action with respect to the properties, however, the LLC operating agreements require the consent of the members, which is defined in the agreement as the *unanimous consent* of all four Hindman siblings.¹ Unsurprisingly, the four Hindman siblings cannot agree on whether to continue to maintain and operate the properties or whether to sell the properties. Given their fundamental disagreement and deadlock over this issue, three of the siblings (Arthur, Judith and Steven) seek judicial dissolution under 6 *Del. C.* § 18-802. The single dissenting Hindman (Barbara Hindman) opposes the petitions for dissolution and has filed counterclaims that are the subject of the pending motion to dismiss. In count I of her counterclaim, Barbara Hindman contends that her siblings breached their fiduciary duties by taking action to liquidate the LLCs, actions which she contends will harm the LLCs and her because they are “inconsistent with the representations about the LLCs made to the IRS in connection with [their mother’s] gift tax returns.”² Barbara Hindman also seeks an injunction to prohibit her siblings from seeking dissolution of the LLCs. Count II of the counterclaim apparently contends that Barbara Hindman’s right to vote under the operating agreements has been interfered with or coerced by her siblings’ refusal to accede to her position regarding the sale of the LLC properties. Barbara Hindman seeks to enjoin her siblings from proceeding with this litigation in order to vindicate her “right to vote” under the operating agreements. Count III of the counterclaim seeks indemnification for Barbara Hindman’s attorneys’ fees and other costs associated with this litigation, assertedly pursuant to a provision in the LLC operating agreements.

None of the counterclaims seeks immediate relief. The claim for indemnification under count III, if it has merit at all, will be determined post-trial. Although it seems highly unlikely at this stage in this inter-family squabble that the Court would award attorneys’ fees and costs for any Hindman sibling, that issue is properly deferred until the conclusion of this matter. In any event, the motion to dismiss count III is denied.

Count I is predicated on respondent’s view that a dissolution will invite IRS scrutiny of the original gift tax calculations, resulting in potential tax liabilities and penalties. Whether the LLCs were created for tax avoidance purposes (and thus petitioners’ current effort to dissolve them breaches a fiduciary duty) is certainly a novel

¹ It is unclear whether the tax advisor or some other advisor suggested a governance structure requiring unanimity, which would seem to invite the sort of dispute involved here.

² Resp’t’s Answering Br. at 7-8.

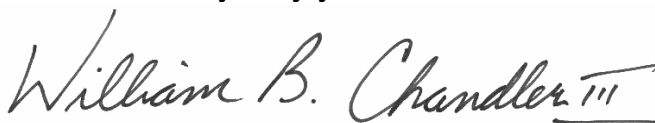
approach to defending a dissolution petition. Nonetheless, if respondent wants to make this argument in this forum, she may do so as a matter of law. The motion to dismiss count I of the counterclaim is denied.

With respect to count II, it also seems highly dubious that this Court would conclude that Barbara Hindman's right to vote has somehow been infringed or coerced in the context of this family feud. Barbara Hindman's own pleadings attest to her full exercise of her voting authority by withholding her consent to the sale of the Hindman properties or to the dissolution of the LLCs. In this same context, Barbara Hindman appears to argue that the inability of the four siblings to agree on whether to dispose of the property or to manage it on an ongoing basis does not "constitute a deadlock" and does not demonstrate that it is not "reasonably practicable" for these LLCs to carry on their business in conformity with their operating agreements. At this stage, however, that is precisely what the petitioners have alleged. It is premature at the motion to dismiss stage to opine whether the "reasonably practicable" standard has been satisfied or not. That issue is for the trial in this matter. No basis exists for dismissing count II of the counterclaim; it will be considered (along with the other counterclaims) at the final hearing on dissolution.

For all these reasons, the motion to dismiss the counterclaims is denied. Counsel shall confer and agree upon a scheduling order that will govern all further proceedings in this case.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive, flowing style. The "III" is written as three distinct vertical strokes.

William B. Chandler III

WBCIII:meg